IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. WRIT PETITION NO. 1264 OF 1993

Shri Sunderji Mulji Shah ..Petitioner.

V/s.

The State of Maharashtra & Ors. ..Respondents.

Shri S. P. Kadam with S.B. Kotak for Petitioner.
Shri V.B.Konde-Deshmukh,APP for Respondents 1 & 6.
Shri S.G. Deshpande for Respondent No.3.
Respondents 4 & 5 are absent though served.

WITH
CRIMINAL WRIT PETITION NO. 1261 OF 2000

Sumermal Misrimal Bafna .. Petitioner.

V/s.

The State of Maharashtra & Ors. ..Respondents.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 18, 2005

PC :-

. Both these petitions can be disposed of by this common order.

2. By these petitions, the Petitioner(s), who are accused Nos. 1 and 2 respectively have taken exception to the order dated 27th August, 1992 passed

by the trial court on a private complaint filed by respondent - Umesh Chagpal Karia for the offence punishable under section 120-B, 420, 109 of I.P.C.. The said order reads thus :-

> "Heard. the offence is cognizable the huge amount is involved. This case is required to investigate through Spl. Police. On the request of Complaint case be sent to P.C.P.,Gen. Branch, Crime, C.I.D., Bombay for investigation U/Sec. 156(3) Cr/PC. & report."
>
> sd/-
> 27.8.92"

3. In other words by this order, the trial court was of the view that investigation through police was necessary for which reason, the trial court forwarded the copy of the complaint to the concerned police in terms of section 156(3) of the Code. It is not in dispute that pursuant to the said order, the concerned police officer has investigated into the matter and

filed police report under section 173 of the Code before the trial court. In view of the police report, the trial court has now issued process/ summons to the concerned accused.

4. As it is seen that investigation has already been conducted and as the entire material has been placed before the trial court alongwith the report, the issue as to whether any offence has been made out as against the accused, as is sought to be argued in these petitions, can be efficaciously dealt with the by the trial court in the event the petitioner(s) accused were to prefer application for discharge under section 245 of the Code. Counsel for the respective petitioner(s) fairly accept this position and submit that if all the issues are kept open to be decided by the trial court, the petitioner(s) will have no difficulty in approaching the trial court for proper relief as may be advised and the said proceedings can be decided on its own merits in accordance with law. The grievance that the concerned investigating officer has acted high handedly in arresting the petitioner(s) inspite of the anticipatory bail granted by this court, even that issue has been examined by this court and necessary orders in that behalf have been passed.

5. In the present petition(s), therefore, the limited question that requires to be examined is whether the criminal action instituted against the petitioner(s) ought to be quashed, as no offence is made out. That question as mentioned earlier, can be examined in the application for discharge to be filed by the petitioner(s), to which remedy the petitioner(s) are inclined to take recourse to before the trial court.

6. Accordingly, these petitions are being disposed of with liberty to the petitioner(s) to take out appropriate proceedings before the trial court, which proceedings will be decided on its own merits in accordance with law. It is once again made clear that all questions raised in these petition(s) are left open to be decided by the appropriate court as and when occasion arises.

7. The petitioner(s) to file discharge application within four weeks from today and if such application is filed, the trial court may proceed to decide the same expeditiously, preferably within three months from the date of its presentation, having

regard to the fact that the case is pending since 1992. It is made clear that the bail granted in favour of the petitioner(s) shall continue until such appropriate order to be passed by the trial court or other competent court as and when occasion arises.

8. Accordingly, the petition(s) are disposed of in the above terms.

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